

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. WMN-01-2872
v.)	
)	
WARFIELD-ROHR CASKET)	
COMPANY, INC.)	
)	
Defendant.)	
_____)	

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS
AND SPECIAL VERDICT FORM

Plaintiff respectfully requests that the Court include and use the proposed jury instructions set forth below in charging the jury in this case.

REQUEST TO CHARGE NO. ____

AGE OF DISCRIMINATOR IRRELEVANT

You are not to assume that one older individual cannot commit age discrimination against another older individual. Indeed, “because of the many facets of human motivation, it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group.”

Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 78 (1998)

Kadas v. MCI Systemhouse Corp., 255 F.3d 359, 361 (7th Cir. 2001)

Wexler v. White’s Fine Furniture, Inc., 317 F.3d 564, 574 (6th Cir. 2003)

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

UNITED STATES DISTRICT JUDGE

REQUEST TO CHARGE NO.

SHIFTING EXPLANATIONS SUPPORT PRETEXT

If you find that at different times, Defendant argued different reasons for terminating Mr. Kuehnl, you reasonably can infer pretext from such shifting or different explanations for Defendant's termination of Mr. Kuehnl.

Appelbaum v. Milwaukee Metropolitan Sewerage Dist., 340 F.3d 573, 579 (7th Cir. 2003)

Dennis v. Columbia Colleton Medical Center, Inc., 290 F.3d 639, 647 (4th Cir. 2002)

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

UNITED STATES DISTRICT JUDGE

REQUEST TO CHARGE NO. _____

POST-FIRING JUSTIFICATIONS SUPPORT PRETEXT

If you find that after firing Mr. Kuehnl, Defendant gave different reasons for terminating Mr. Kuehnl, in addition to those that Defendant claims it relied on at the time of the decision, you reasonably can infer pretext from such post-firing justifications for Defendant's termination of Mr. Kuehnl.

Jolly v. Northern Telecom, Inc., 766 F. Supp 480, 495 (E.D. Va. 1991)

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

UNITED STATES DISTRICT JUDGE

REQUEST TO CHARGE NO. ____

EVIDENCE OF AGE DISCRIMINATION

An employer's statement that a much younger employee "could give [the employer] more years clearly reflects [the employer's] reliance on [the employee's] age as one of the reasons for his termination."

EEOC v. Warfield-Rohr Casket Company, Inc., 364 F.3d 160, 163 (4th Cir. 2004).

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

UNITED STATES DISTRICT JUDGE

REQUEST TO CHARGE NO. ____

NO DUTY TO ACCEPT LESSER POSITION

Though Mr. Kuehnl must use reasonable diligence in finding other suitable employment, he is under no duty to go into another line of work, accept a demotion, or take a demeaning position. Indeed, he need not seek employment which is not consistent with his particular skills, background, and experience or which involves conditions that are substantially more onerous than his previous positions.

Ford Motor Company v. EEOC, 458 U.S. 219, 231 (1982)

NLRB v. Madison Courier, Inc., 472 F.2d 1307, 1320-21 (D.C. Cir. 1972)

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

UNITED STATES DISTRICT JUDGE

REQUEST TO CHARGE NO.

SELF EMPLOYMENT - REASONABLE DILIGENCE IN MITIGATING DAMAGES

A claimant's decision to become self-employed may constitute reasonable diligence for purposes of mitigating one's damages, particularly after unsuccessfully looking for other employment.

Ford v. Rigidply Rafters, Inc., 984 F. Supp. 386, 390 (D. Md. 1997)

EEOC v. Joe's Stone Crab, Inc., 15 F. Supp. 2d 1364 (S.D. Fla. 1998)

Nord v. U.S. Steel Corp., 758 F.2d 1462, 1471 (11th Cir. 1985)

Smith v. Great American Restaurants, Inc., 969 F.2d 430, 438 (7th Cir. 1992)

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

UNITED STATES DISTRICT JUDGE

SPECIAL VERDICT FORM

1. Do you find that Defendant Warfield-Rohr Casket Company terminated Mr. Kuehnl because of his age?

YES _____ NO _____

If the answer to Question 1 is YES, proceed to the remaining questions. If the answer to Question 1 is NO, you need not answer the remaining questions.

2. Do you find that Defendant Warfield-Rohr Casket Company's termination of Mr. Kuehnl was willful?

YES _____ NO _____

3. What is the amount of back wages Mr. Kuehnl should be awarded?

\$ _____

Foreperson

Date

Respectfully submitted,

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/s/
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